

LOS/PCN/SCN.4/WP.16/Add.7*
18 October 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4

PROVISIONAL REPORT OF SPECIAL COMMISSION 4

(DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10
OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO
THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE
WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION, REGARDING
PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA)

Addendum

REPORT WITH RECOMMENDATIONS CONCERNING THE INITIAL
FINANCING AND BUDGET OF THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA

(Prepared by the Secretariat)

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
INTRODUCTORY NOTE	1 - 2	3
I. GENERAL	3 - 6	3
II. GOVERNING PRINCIPLES	7 - 9	4

* This working paper also constitutes addendum 7 to document
LOS/PCN/SCN.4/WP.15 which was not previously issued as a separate document.

CONTENTS (continued)

	<u>Paragraphs</u>	<u>Page</u>
III. FINANCIAL ARRANGEMENTS	10 - 13	5
IV. PROVISIONAL ARRANGEMENTS	14 - 17	6
V. WORKING CAPITAL FUND	18 - 20	7
VI. ALTERNATIVE SOURCES OF INITIAL FUNDING	21 - 22	7
VII. MEETING OF STATES PARTIES	23 - 24	8

INTRODUCTORY NOTE

1. The initial financing of the International Tribunal for the Law of the Sea and the formulation of its first budget were considered by Special Commission 4 on the basis of the working paper presented by the Secretariat (LOS/PCN/SCN.4/WP.11). The summary of the discussions of the Special Commission on the subject are contained in the Chairman's summary of discussions (LOS/PCN/SCN.4/L.18).

2. The Special Commission decided that since it was of importance, some clear recommendations should be formulated with regard to the initial financing and budget of the Tribunal in order to facilitate the decision-making thereon by the Meeting of States Parties. The Special Commission thus mandated the Secretariat to prepare a "Report with recommendations concerning the initial financing and budget of the Tribunal", taking into consideration the deliberations of the Special Commission in this regard. The present working paper constitutes the response thereto.

I. GENERAL

3. The Special Commission considered the precedent of the United Nations and the practice followed by its Preparatory Commission, and also the manner in which other new international institutions or bodies have been established by the United Nations. In accordance with the deliberations of the Special Commission, the conclusion was drawn that historic precedent should also be considered, particularly as it related to the establishment, as an organ of the League of Nations, of the Permanent Court of International Justice in The Hague, since it was the most appropriate experience for the creation ab initio of an international judicial body of a global character. Consideration was also given to the experience of the International Court of Justice under the Charter of the United Nations.

4. It was the understanding of the Special Commission that the recommendations should take into account that at the outset the workload would probably be light and consequently there should be provision for the phasing in of the Tribunal. Account should be taken of the fact that initially there may not be a need for the full complement of judges in view of the resulting financial implications. This is reflected in section VII below.

5. It was also the understanding of the Special Commission that fundamental to the nature of the International Tribunal and its central role in the settlement of the disputes under the Convention is that it should be sui generis, stand alone, and be financially autonomous. In that regard the Tribunal is different from the International Court of Justice, which would otherwise be the principal judicial institution of reference with regard to the different aspects of its establishment; hence also the difficulty in formulating original recommendation as to the financing and budget of the Tribunal.

6. As a matter of convenience, it was considered appropriate to divide the budgetary recommendations into two sections, following the pattern of the working paper (LOS/PCN/SCN.4/WP.11). The two sections would respectively be:

/...

(1) requirements for the initial establishment, both preliminary and provisional, to serve during the early functioning; and (2) long-term requirements which would provide for the appropriation of finances and the permanent arrangements therefor. This would be consistent with the precedent of the Preparatory Commission for the United Nations. It would also be consistent with the experience of the League of Nations.

II. GOVERNING PRINCIPLES

7. In the financing of the Tribunal, the governing principles would be financial responsibility, fiscal restraint, rational policies and proper administration. These are general guidelines that should constitute the framework of any scheme to be established by the Meeting of States Parties.

8. At all stages, whether during the initial phase, in transition, or when the Tribunal is fully operational, it was understood that certain factors would have to be taken into account. These would include the following:

(a) The financial system should promote the most efficient and economical administration;

(b) Financial controls should not in any way influence or affect the essential independence and impartiality of this judicial body;

(c) Financial factors should not be permitted to frustrate or hinder the free recourse to the Tribunal by all states, whether developed or developing, and by other entities that have access to it;

(d) Parties before the Tribunal should be on an equal footing.

9. In the initial establishment of the Tribunal it was broadly accepted that:

(a) The provisional arrangements should, to the extent possible, minimize the initial costs to States Parties to the Convention, taking into account that the work of the Tribunal will evolve over a number of years;

(b) The development of the Tribunal into a full-scale judicial body should be phased in;

(c) The phasing in should be on the basis of the anticipated and growing workload during the initial years. ^{1/}

^{1/} See the Chairman's summary of discussions on administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/L.14); see also the working paper on administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.8); as well as that on a scheme to phase in the establishment of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.8/Add.2).

It was also understood that financial implications would be greater as the case-load increases.

III. FINANCIAL ARRANGEMENTS

Sources of financing the Tribunal

10. When providing for the establishment of the Tribunal, the Convention 2/ states that the expenses of the Tribunal shall be borne by the States Parties and the International Seabed Authority and also by the users of the Tribunal, other than States Parties. Contributions would be made primarily by States Parties and the Authority. With regard to the contribution by States Parties, the Authority, and by entities other than States Parties, there is no clear guidance in the Convention with regard to how to assess and quantify their contributions to the costs of the Tribunal.

11. Apportionment of contributions (scale of assessments) - A determination needs to be made as to the manner in which the financing of the Tribunal would be apportioned between States Parties, the Authority and parties to proceedings before the Tribunal. A scheme for apportionment or a scale of assessments would have to be adopted. The determinations could be based on the capacity of each to pay, taking into account the established criteria and the international practice in this regard.

12. The experience of the United Nations was that the expenses were apportioned among Member States according to the capacity to pay taking into account: (a) comparative income per head of population; (b) temporary dislocation of national economies arising out of the Second World War; and (c) the ability of Members to secure foreign currency.

Budgetary control and administration

13. The Meeting of States Parties needs to conclude on several basic arrangements for the Tribunal. In doing so it may be expected to follow precedent and rely on the experience of the United Nations system:

(a) Periodicity of budget. The budget of the Tribunal should be on an annual basis initially, with the possibility of revision or change to a biennial budget if considered appropriate. This takes into account that during the initial phasing in, an annual budget would permit greater flexibility and would require less forecasting and long-term assumptions. This follows the experience of the United Nations;

2/ Annex VI, art. 19.

(b) Preparation of budget. The Registrar, as chief administrative officer, should formulate and present the initial budget of the Tribunal to the Meeting of States Parties, and thereafter as may be determined by the Meeting. Such an arrangement is consistent with the practice of the United Nations where the Secretary-General, as its chief administrative officer, fulfils a corresponding function;

(c) Budget review process. The Commission did not arrive at any final conclusion. However, it examined the alternatives as to the budget review process and the composition of the body that would be given the competence to function as a review mechanism. It left open the option of arriving at an arrangement whereby the Advisory Committee on Administrative and Budgetary Questions (ACABQ) of the General Assembly of the United Nations could serve as an independent review body. Any financial review bodies established for the International Seabed Authority were not considered appropriate, inter alia, since the International Seabed Authority would be a contributor to the budget of the Tribunal; 3/

(d) Operating currency. In determining which would be the currency in which the Tribunal will operate, consideration should be given to the fact that the currency of the host country of the headquarters has in practice been used in the case of the United Nations.

IV. PROVISIONAL ARRANGEMENTS

14. Pending the review and adoption of the first annual budget of the Tribunal, it was concluded that a means of financing the interim expenses and providing for an interim mechanism to control the provisional budget and controlling the interim expenses needed to be determined. This appears necessary in view of the anticipated delay in the approval of a scale of assessments for apportioning expenses between States Parties and the International Seabed Authority, and in determining the methodology to be applied. In this context, following international practice, the adoption on an interim basis of an existing scale of assessments such as that of the United Nations was considered an appropriate option. Such an arrangement would necessarily be without prejudice to the adoption later of a scale or assessments specific to the Tribunal.

15. The provisional period for which it would be necessary to make financial arrangements through the adoption of a provisional budget and the establishment of a working capital fund should cover the whole of the first financial year with the possibility of extensions to the next financial period pending renewal, revision or supersedence of the existing arrangement.

16. An important corollary to the provisional arrangements for financing is the formulation of draft financial regulations, which would incorporate the terms of the provisional budget and the working capital fund.

3/ Annex VI, art. 19, of the Convention.

17. It is understood from experience (United Nations) that there would be a short period before a working capital fund could be established and in the interim the expenses would have to be financed by some other means.

V. WORKING CAPITAL FUND

18. The establishment of a working capital fund is foreseen in order to cover the initial period, before a scale of assessments is approved and assessed contributions paid in. This should also cover incidental costs resulting from the Meeting of States Parties.

19. Given the necessity to maintain a financial reserve for the administration of this Tribunal, the arrangement for a working capital fund should be continued, in addition to the general fund established. This has been the experience of international organizations, and particularly so in the case of the United Nations.

20. The working capital fund for a new international institution may be made up of advances from States Parties. These advances could be reimbursable or non-reimbursable, or eventually set off against assessed contributions. The contributions to the working capital fund were not credited to the assessed contributions of Member States in the case of the United Nations. There has also been a recent experience where the working capital fund was very substantially contributed to by the host country, which also provided host facilities. Another alternative in the existing experience has been the provision of a loan from the United Nations.

VI. ALTERNATIVE SOURCES OF INITIAL FUNDING

21. The Special Commission reviewed the alternatives as regards initial financing of the Tribunal. No conclusion was drawn as regards apportioning expenses among the States Parties. The option of advanced payment against contributions to be assessed in the future was considered one possible source of initial funding. Alternative means of funding would include:

- (a) A reimbursable or non-reimbursable loan from the United Nations;
- (b) Advances against future contributions from States that are or will be States Parties;
- (c) Reimbursable or non-reimbursable contributions by States that have taken an initiative in establishing the Tribunal or by the host country.

22. In the case of the United Nations, Governments that made advances against future contributions later treated those advances as non-reimbursable loans and did not seek credit for these payments against their assessed contributions. Some delegations were of the view that an individual State should not be responsible for the initial financing of the Tribunal since it was intended to be an independent and neutral institution. In that view, the example of the United Nations University where, as an alternative source of initial funding, the host country provided a substantial endowment amounting to \$100 million, was

not considered appropriate. Other delegations considered that experience as an appropriate example of an alternative source of financing the Tribunal. The Commission concluded that, although the United Nations University is different from the Tribunal, it nevertheless constitutes a useful example.

VII. MEETING OF STATES PARTIES

Considerations in decision-making

23. In its decision-making, it would be appropriate for the Meeting of States Parties to take into consideration the following factors:

(a) Physical facilities would be made available to the Tribunal by the Government of Germany; 4/

(b) Operating costs should be reduced in order to achieve maximum economy and the highest possible level of efficiency (see LOS/PCN/SCN.4/WP.8 and Add.1 and 2; LOS/PCN/SCN.4/WP.15/Add.6);

(c) The Tribunal is independent and would not therefore enjoy shared support services and facilities, unless the Meeting of States Parties decides otherwise;

(d) A cost-effective institution should be achieved through: the scheme to have 11 members of the Tribunal available at the initial stage (instead of all 21 judges) and the establishment of a Registry that is not full-fledged with the postponement of appointments to highly paid level posts; and the use by the Tribunal of only two official working languages.

Premises occupied by the Tribunal

24. The Meeting of States Parties would have to consider and adopt any arrangements made between the Tribunal and the host country. This would then enable it to consider the expenses of the premises to be occupied by the Tribunal. It should be taken into consideration that some of the costs might be borne by the Government of Germany (providing basic fixtures and furniture for the buildings) but that some requirements and facilities are necessary to supplement the offer of Germany and that their costs would be the responsibility of the Tribunal.

4/ See communications from the Government of Germany (LOS/PCN/80 and LOS/PCN/106 and subsequent reports (LOS/PCN/SCN.4/L.6, L.8, L.12, L.16 and L.16/Add.1)). The Government of Germany would provide the buildings (see LOS/PCN/SCN.4/WP.15). This does not include provision for the residence of the President of the Tribunal, who would reside at the seat of the Tribunal.